

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Bankruptcy 03-33188
Adversary 04-3291

Janis S. Currell,

Debtor,

Michael J. Iannacone, Trustee,

Plaintiff,

NOTICE OF MOTION AND MOTION
FOR DEFAULT JUDGMENT

v.

Janis S. Currell,

Defendant.

TO: The above-named defendant and her attorney, Barbara J. May.

Michael J. Iannacone, Trustee of the above-named debtor's bankruptcy estate,
respectfully moves the Court for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this motion at 10:00 a.m., on September 15, 2004, in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota. Said motion will be based upon all the files and records herein in the attached Affidavit.
2. Any response to this motion must be filed and delivered not later than September 8, 2004, which is seven (7) days before the time set for the hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than September 5, 2004, which is ten (10) days before the time set for the hearing (including Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on May 2, 2003. The case is now pending in this Court.
4. This motion arises under 11 U.S.C. §§ 541, 542 and 727 and Fed.R.Bankr.P. 7005, 7007, 7055, 7056 and Local Rules 7007-1 and 7055-1. This motion is filed under Fed.R.Bank.P. 9013, 9014 and Local Rules 9013-1, 9013-2 and 9013-3. Movant requests an Order for Default Judgment against Defendant to have Defendant's discharge in bankruptcy revoked.

WHEREFORE, Michael J. Iannacone moves the Court for an Order entering judgment by default revoking Defendant's discharge in bankruptcy and such other relief as may be just and equitable.

Dated: August 24, 2004

/s/ Michael J. Iannacone
Michael J. Iannacone, #48719
Attorney for Trustee
8687 Eagle Point Blvd.
Lake Elmo, MN 55042
(651) 224-3361

1. That on May 5, 2003, your Affiant was appointed Interim Trustee in the above-captioned bankruptcy estate.
2. That Debtor and her attorney appeared and testified at the First Meeting of Creditors on June 6, 2003, at which time Debtor was advised that her 2003 state and federal income tax returns were to be made available to the trustee for examination.
3. That on January 28, 2004, Trustee requested Debtor to provide him with copies of her 2003 state and federal income tax returns. That on April 21, 2004, Trustee applied for and obtained an Order dated May 26, 2004 directing Debtor to turn over copies of her

2003 state and federal income tax returns by June 7, 2004. Defendant has failed to obey said Order.

4. That on June 25, 2004, Defendant was served by certified mail and first class mail postage pre-paid and her attorney, Barbara J. May, was served by first class mail with the Complaint which is the subject of this Motion. The debtor received the certified mail on June 26, 2004 and the first class mail was not returned. Her attorney's first class mail was also not returned.
5. That no answer has been filed or served and Defendant has not responded in any way.
6. That Defendant is in default.
7. Affiant further states that the following items of costs and disbursements by or on behalf of Plaintiff in said action are just, true and correct and have been necessarily paid or will be paid and incurred by Plaintiff in connection with said action:

Filing fee to Clerk of Court	\$150.00
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Postage to serve Summons & Complaint	\$5.76
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FURTHER YOUR AFFIANT SAYETH NOT.

____/e/ Michael J. Iannacone____
Trustee

Subscribed and sworn to before me
this 24th day of August, 2004.

____/e/ Krisann Treague____
Notary Public

Realtor

that Defendant's address is as follows:

3423 Rae Circle
Woodbury, MN 55125

that Defendant's business address is as follows:

Edina Realty
Address unknown

that Defendant's post office address is as follows:

3423 Rae Circle
Woodbury, MN 55125

3. That a Summons and Complaint with proof of service thereon were duly filed in the office of the Clerk of Court; that the time allowed by law specified in said Summons for said Defendant Janis S. Currell to answer the Complaint in said action has elapsed and that no answer or other pleading has been received by or served upon said Plaintiff and that Defendant Janis S. Currell has not otherwise defended in the action and that accordingly said defendant is in default.
4. Affiant further states that Defendant is not now, as Affiant verily believes, in the military service of the United States; that this affidavit is made in compliance with the Soldiers' and Sailors' Civil Relief Act of 1940.

FURTHER SAYETH AFFIANT NOT

___/e/ Michael J. Iannacone___
Trustee

Subscribed and sworn to before me
this 24th day of August, 2004.

___/e/ Krisann Treague___
Notary Public

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Bankruptcy 03-33188
Adversary 04-3291

Janis S. Currell,

Chapter 7 Case

Debtor,

Michael J. Iannacone, Trustee,

Plaintiff,

**MEMORANDUM IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENT**

v.

Janis S. Currell,

Defendant.

FACTS

This Motion is brought by Plaintiff-Trustee against Debtor for default judgment for failure to answer Plaintiff's Complaint to revoke Debtor's discharge.

The above-named Debtor filed Chapter 7 Bankruptcy on May 2, 2003. On May 5, 2003, Michael J. Iannacone was appointed trustee of her bankruptcy estate. Mr. Iannacone examined Debtor at the First Meeting of Creditors on June 6, 2003, at which time, informed Debtor that a portion of her 2003 income tax refunds would be property of the bankruptcy estate. The debtor was informed that upon completing her tax returns she should furnish the trustee with copies of the returns so that he could determine that amount which would be due to the bankruptcy estate.

On January 28, 2004, Trustee also contacted Debtor by mail requesting copies of her 2003 income tax returns and an Order directing Debtor to surrender property was obtained on May 26, 2004 directing Debtor to turn over her 2003 state and federal income tax returns by June 7, 2004. Debtor have failed to obey said Order.

Debtor has failed and continues to fail to turn over the above information to the trustee. Debtor has also failed to answer the Complaint filed against her, which Complaint is for the revocation of her discharge in bankruptcy, which is the subject of this Motion.

ARGUMENT

Plaintiff requests that the Court enter judgment against Defendant by default judgment for revocation of Debtor's discharge in bankruptcy.

The bankruptcy code provides in 11 U.S.C. Section 727(d)(2) and (3):

(d) On request of the trustee, a creditor, or the United States Trustee, and after notice and a hearing, Court shall revoke a discharge granted under subsection (a) of this section if

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(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) The debtor committed an act specified in subsection (a)(6) of this section.

In 11 U.S.C. Section 727(a)(6)(A):

(6) The debtor has refused, in the case -

(A) to obey any lawful order of the Court, other than an order to respond to a material question or to testify;

The debtor has failed to provide the plaintiff with tax returns which may reveal a tax refund, a portion of which would be property of the bankruptcy estate. The debtor has knowingly

failed to obey the lawful Order of the Court dated May 26, 2004 ordering Debtor to turn over information which may reveal property belonging to the bankruptcy estate.

For the foregoing reasons Plaintiff prays for an Order revoking Debtor's discharge granted on August 6, 2003 pursuant to 11 U.S.C. Section 727(a).

Debtor has also failed to answer Plaintiff's Complaint served upon her and upon her attorney. Bankruptcy Rule 7004(b)(9) reads as follows:

- (b) Service by first class mail. In addition to methods of service authorized by Rule 4(c)(2)(C)(i) and 4(d) F.R. Civ. P., service may be made within the United States by first class mail postage prepaid as follows:
- (9) Upon the debtor, after a Petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing copies of the Summons and Complaint to the debtor at the address shown in the Petition or Statement of Affairs or to such other address as the debtor may designate in writing filed with the Court and, if the debtor is represented by an attorney, to the attorney at his post-office address.

Bankruptcy Rule 7004(d) provides for nationwide service.

The trustee of this bankruptcy estate mailed the Complaint in this manner to the last known address of the debtor given to the trustee by the United States Post Office when the trustee used the address shown on Debtor's Petition or on a previous correspondence. The trustee also served the Complaint upon Debtor's attorney by mail.

Bankruptcy Rule 7012(a) provides in part:

- (1) When presented. If a Complaint is duly served, the defendant shall serve an Answer within thirty (30) days after the issuance of the Summons, except when a different time is prescribed by the Court.

To date Debtor has failed to answer Trustee's Complaint.

Bankruptcy Rule 7055 refers to Rule 55 F.R. Civ. P., which provides:

- (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules and that fact is made to appear by Affidavit or otherwise, the Clerk shall enter his default.
- (b) Judgment. Judgment by Default may be entered as follows:
 - (2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the Court therefore;...

Because the defendant debtor has failed to plead or otherwise defend herself in this adversary proceeding, Plaintiff requests that the Court enter Judgment by Default against her as prayed for in Plaintiff's Complaint, specifically, Plaintiff prays that Debtor's discharge in bankruptcy be revoked for failure to turn over property which may belong to her bankruptcy estate.

Dated: August 24, 2004

/s/ Michael J. Iannacone
Michael J. Iannacone, #48719
Attorney for Trustee
8687 Eagle Point Blvd.
Lake Elmo, MN 55042
(651) 224-3361
(651) 297-6187 Fax

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Janis S. Currell,

Bankruptcy 03-33188
Chapter 7 Case
Adversary 04-3291

Debtor.

Michael J. Iannacone,

Plaintiff,

**UNSWORN CERTIFICATE
OF SERVICE**

v.

Janis S. Currell,

Defendant.

I, Krisann Treague, employed by Michael J. Iannacone, attorney licensed to practice law in this Court, with office address of 8687 Eagle Point Blvd., Lake Elmo, Minnesota, declare that on August 24, 2004, I mailed copies of Notice of Motion and Motion for Default Judgment, Affidavit of Trustee, Michael J. Iannacone on the Merits and Costs and Disbursements, Affidavit of No Answer, Identification and Non-Military Status, Memorandum in Support of Motion for Default Judgment, and Order Revoking Discharge to each entity named below at the address stated below for each entity by first class mail postage prepaid:

United States Trustee
1015 U.S. Courthouse
300 S. Fourth Street
Minneapolis, MN 55415

Barbara J. May, Esq.
4105 N. Lexington #310
Arden Hills, MN 55126

Janis S. Currell
3423 Rae Circle
Woodbury, MN 55125

And, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on: August 24, 2004

____/e/ Krisann Treague____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Bankruptcy 03-33188
Adversary 04-3291

Janis S. Currell,

Chapter 7 Case

Debtor,

Michael J. Iannacone, Trustee,

Plaintiff,

ORDER REVOKING DISCHARGE

v.

Janis S. Currell,

Defendant(s).

At St. Paul, Minnesota.

The above-entitled matter came duly on for hearing before the undersigned Judge of Bankruptcy Court on the Motion of Plaintiff for Default Judgment. Plaintiff appeared pro se and there were no appearances by or on behalf of Debtor.

Upon the arguments of counsel and upon all the files, records and proceedings herein the Court makes the following:

FINDINGS OF FACT

1. That the plaintiff is the duly appointed, qualified and acting Trustee in the above-captioned bankruptcy estate.

2. That Defendant and her attorney were served with a copy of the Summons and Complaint by mail in accordance with the Rules of Bankruptcy Procedure on or about June 25, 2004.
3. That there has been no answer or other pleading filed by or on behalf of Defendant.
4. That the plaintiff has duly demanded from Defendant income tax returns which may reveal property belonging to her bankruptcy estate.
5. That on May 26, 2004 the Court entered an Order directing Debtor to turn over and surrender to the trustee copies of her 2003 tax returns.
6. That Debtor has not turned over or otherwise delivered to the trustee copies of her 2003 tax returns as required by the Order dated May 26, 2004.

From the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. That Defendant herein is in default.
2. That Debtor has refused to obey a lawful Order of the Court within the meaning of 11 U.S.C. Section 727.
3. That the trustee is entitled to a judgment against Defendant revoking her discharge entered August 6, 2003 pursuant to the provisions of 11 U.S.C. Section 727.

From the foregoing Conclusions of Law,

IT IS HEREBY ORDERED as follows:

ORDER FOR JUDGMENT

1. That the Debtor's discharge be, and the same hereby is revoked.

2. That pursuant to Bankruptcy Rules 2002(f)(8) and 4006 and Local Rule 116(a) the Clerk of Bankruptcy Court is ordered to send notice of the revocation of discharge to all creditors and other parties in interest. Let judgment be entered accordingly.

Dated this _____ day of _____, 2004.

Gregory F. Kishel, Chief Judge
United States Bankruptcy Court